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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/792,014 | 03/03/2004 | Jay S. Walker | 03-025 | 4273 |
| 22527 | 7590 | 03/31/2009 | EXAMINER | |
| WALKER DIGITAL MANAGEMENT, LLC 2 HIGH RIDGE PARK STAMFORD, CT 06905 | | | RENDON, CHRISTIAN E | |
| ART UNIT | PAPER NUMBER | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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|------------------------------|---------------------|------------------------|---------------------|
| Office Action Summary | | Application No. | Applicant(s) |
| | | 10/792,014 | WALKER ET AL. |
| Examiner | | Art Unit | |
| | CHRISTIAN E. RENDÓN | 3714 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 10 February 2009.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1,2,7-11,14,15,17 and 19 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,2,7-11,14,15,17 and 19 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____

5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION***Response to Amendment***

This office action is in response to the amendment filed on 2/10/09 in which applicant amends claims 1, 7, 10-11 and 17-19, and responds to the claim rejections. The previous Advisory Action is dismissed due to an error corrected by this action. Claims 1-2, 7-11, 14-15, 17 & 19 are still pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-2, 10-11, 14-15 & 25-26 are rejected under 35 U.S.C. 102(e) as being anticipated by Webb (US 6,733,389).

1. Webb discloses a wagering game consisting of a plurality of reels containing a plurality of symbols. The game continues until one of two conditions is met: the player has exhausted their spin count as indicated by window 212 or he/she accumulated a predetermined number of termination indicators 208 (col. 10, lines 25-27). The art discloses a game using the well known baseball rule "three strikes, you're out" as its termination event, thus a termination indicator is symbolized by a strike (col. 10, lines 35-38). In one embodiment, the appearance of a strike only on the reel designated by the termination reel indicator 206 increases the strike count (col. 10, lines 46-50) displayed in the upper portion of the game (fig. 9A).

2. Regarding claim 1-2, Webb discloses a **gaming device** that initiates a **wagering game** containing termination symbols (abstract). The game contains a plurality of reel 34 consisting of several positions where a symbol 200 is randomly determined (col. 10, lines 65-66) to appear by the symbol generator (abstract) during the game (col. 2, lines 30-31). The symbol positions on the reels

34 are considered the **game variables that define the game session** or space. The symbols that appear in those positions after a spin are viewed as the **current value of the game variable**. As stated above, the accumulation of three strikes represents the activation of a termination trigger that ends the game (col. 3, lines 30-31). In other words, a **game session is terminated based on** achieving a **terminating value** equaling three (col. 12, lines 34-36); which is accomplished when strike appears as the **current value** on the designated terminating reel. Therefore the **terminating value is based on a running count of a number of losing game outcomes (strikes) during the session**. Furthermore, the duration of the game is **not defined by a predetermined number of handle pulls or period of time** since the appearance of a strike is randomly determined; thus allowing for the possibility of a **plurality of plays at the game** to the player.

3. Regarding claim 10, the art discloses a player playing the **gaming device** for a **flat rate** by depositing the number of credits will allow the game to start (col. 6, lines 1-3). The primary game of the art contains a **game variable that represents a terminating condition** as a symbol which is randomly determined (col. 10, lines 65-66) during the game (col. 2, lines 30-31). The accumulation of three strikes is considered an event that **satisfies a terminating condition** that causes the **end of a game** (col. 3, lines 30-31). The appearance of a strike is determined randomly (col. 10, lines 65-66) through a mathematical calculation or model (col. 1, lines 53) thus the art inherently incorporates a **probability on a game parameter** and **entering a bonus round**. The art designates a reel using the second game triggering reel indicator **202** to associating the activation of a second game through the appearance of triggering symbol on said reel (col. 10, lines 54-58). Furthermore, the strike count is viewed as representing a **rate of expiration based on predetermined game symbols**.

4. Regarding claims 11 and 14-15, the art discloses a **gaming device** initiating a **gaming session with the pull of a handle** or the arm (fig. 1A, 18) resulting in the spinning of the reels. As stated above, the "strike count" that is based on the **outcome of the current value of the game**

parameter and the terminating value, which **determines the duration and termination of the game**. Furthermore, the appearance of a bonus triggering event allows the player to interact with a secondary or bonus game (col. 2, lines 56-59). When a player is able to select all four bonus choices before the termination of the primary game, the player fulfills the win condition of the second game (col. 11, lines 62-65). Each bonus choice **204** is a different game (col. 11, lines 12-16) thus the bonus prize count displayed in the upper right hand portion of the game display (fig. 9C) is a **game parameter** that indicates the current bonus count or **number of bonus rounds achieved during the game session**. In addition, a game session is considered **prepaid** since the game device accepts coins, bills and credit cards before a game is played; as well as vouchers (col. 5, lines 63-66).

5. Regarding claims 25-26, the strike count is determined by the **number of losing outcomes** or strikes that occur on the indicated reel or any reel (col. 10, lines 46-53). A player achieves a win condition when a predetermined number of markers are aligned in a predetermined pattern (col. 2, lines 24-26). None of the winning combinations are associated with termination symbols (col. 13, lines 15-17) thus the appearance of a termination symbol **results in a losing outcome, no payout**.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Colin et al. (2002/0119813

A1) in view of an ordinary artisan in the art.

6. The wagering game (Colin: par. 20, lines 2-3) disclosed by Colin urges a player to create a poker hand through the selection of five cards from a pool of cards (Colin: par. 7, lines 5-8). Before a player is allowed to start, the CPU evaluates the card selection area to determine all of the possible winning hands (Colin: par. 40). In other words, the game determines a set of **predetermined poker**

hands that will **terminate the game** with an outcome. The selection of the cards in the right order is also required from the player (Colin: par. 41, lines 5-6). Once the fifth card is selected the game of chance ends (Colin: par. 37, lines 13-14), thus terminating a session when the number of cards or **game parameter value is equal to the terminating value** of 5. The prior art however remains silent towards providing a player a game session or a **plurality of hand outcomes** to the player for their wager. One of ordinary skill would view the game offered by Colin as too short therefore would alter the game to offer several rounds of game play for a set wager value to encourage people to play.

Claims 7-9 & 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Jaffe (US 6,551,187).

7. Jaffe discloses a **gaming device** containing **predetermined symbols** on slot reels used to represent the primary and secondary game (abstract). The bonus game is triggered when the symbols called "streakier" appear on the first reel with the word "Streak" superimposed over any of the symbols on the fifth reel (col. 5, lines 33-36). At this point the reels are stopped, the "streakier" symbol or **game element** moves from symbol to symbol being chased by another **game element** called "the policeman" (col. 5, lines 54-56). The bonus game terminates when a **predetermined configuration with both game elements** occurs, represented as the "policeman catches the streakier"; a **predetermined outcome** determined by comparing the number of rounds to a **predetermined count** (col. 6, lines 59-61). Each symbol the "streakier" stops at becomes a wild symbol (col. 6, lines 1-2) and the game reevaluates the pay line to see if currently it's a winning combination (col. 5, lines 62-67).

Response to Arguments

8. Applicant's arguments filed 2/10/09 have been fully considered but they are not persuasive and/or moot as a result of the Applicant's amendments. This Office Action corrects the Examiner's

error in applying the prior art as a 102(b) reference when the reference is 102(e) respective to the applicant's claims.

9. As for Webb not disclosing a wagering game, the Examiner views any game that takes bets (Webb: col. 6, lines 8-9) as a wagering game. The reference discloses terminating a first game when one of the current symbols on the reels matches the predetermined termination symbols (Webb: col. 3, lines 32-34). The prior art teaches a plurality of plays of a game not defined by providing the player a predetermined number of free spins **212** for each first game that is played (Webb: col. 4, lines 17-24). The length of a game is determined randomly therefore teaching not defining a gaming session by a period of time or handle pulls. The symbols called "strikes" are considered by the Examiner as losing outcome since the accumulation of symbols can end the game for a player prematurely (Webb: col. 12, lines 34-36).

10. Regarding the arguments made towards claim 10, the prior art teaches initiating a flat rate play session by depositing the number of credits will allow the game to start (col. 6, lines 1-3) and offering the player a set number of free spins **212** with each session. Furthermore the symbols are randomly determined by the symbol generator (abstract) therefore teaching a probability for a symbol and activating a bonus game (col. 7, lines 35-38). The bonus **204** and strike counters **208** were viewed as teaching the rate of expiration of a game symbol since the completion of either one: collecting 4 bonus symbols or 3 strikes will end the first game and nullifying the accumulated value of the opposing counter.

11. Regarding the arguments towards the Jaffe reference, the prior art teaches a wagering game at a flat rate play (Jaffe: col. 4, lines 5-11) session since a game ends when a "streaker" is caught (Jaffe: col. 7, lines 35-37) which can take one or several reel spins. In other words, the two "streaker" are a plurality of game elements that correspond to a predetermined game outcome called "caught". An outcome is predetermined by the game by comparing the number of rounds to a predetermined

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count (col. 6, lines 59-61). Furthermore, the Examiner views the two possible outcomes: policeman catching either "streaker" as a plurality of possible outcomes.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHRISTIAN E. RENDÓN whose telephone number is (571)272-3117. The examiner can normally be reached on 9 - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dmitry Suhol can be reached on 571-272-4430. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry Suhol/
Supervisory Patent Examiner, Art Unit 3714

/CHRISTIAN E RENDÓN/
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